IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

Bail Appl..No. 7069 of 2007()

CRIME NO. 324/07 OF NADAKKAVU POLICE STATION

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PETITIONER/ACCUSED

O.BABURAJ, S/O. O.RAJAN, AGED 38 YEARS,
OTTAKANDATHIL HOUSE, P.O.PUTHIYARA,
THIRUTHIYAD, KOZHIKODE.

BY ADV. SRI.K.ANTONY JOSEPH

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE, NADAKKAVU POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7069 of 2007

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Dated this the 20th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 420 I.P.C. Crime has been registered on the basis of a complaint by the Union of autorikshaw drivers. The crux of the allegations against the petitioner is that he painted a false representation on his autorikshaw to facilitate its plying within a local area, within which he was not entitled as per the permit to ply. Crime has been registered. Investigation is in progress. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is ill. Anticipatory bail may, in these circumstances, be granted, prays the learned counsel.

3. The learned Prosecutor opposes the application. He submits that the crime committed is gross. There are no circumstances to justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C., submits the learned Prosecutor.

4. I have considered all the relevant inputs. The illness of the petitioner can certainly be urged before the learned Magistrate when the application for regular bail is considered under Section 437 Cr.P.C. On that ground alone I am not persuaded to invoke the discretion under Section 438 Cr.P.C. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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